

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL MEMORANDUM**

HB 833 – SB 842

March 30, 2015

SUMMARY OF ORIGINAL BILL: Enacts the Primacy and Reclamation Act of Tennessee, that implements multiple provisions related to coal mining, including but not limited to the following: a requirement for the Department of Environment and Conservation (TDEC) to serve as the state regulatory authority for surface coal mining and reclamation operations; a requirement for TDEC to adopt rules by emergency rulemaking within 90 days of the effective date of the act; designation of the Board of Water Quality, Oil and Gas as the Board of Natural Resources; addition of two members to the Board representing stakeholders in surface coal mining, with a requirement the Board promulgates rules consistent with federal law and regulations; a requirement for the state to seek primacy after bill is enacted and the Governor to seek any federal funding available; the creation of several Class E Felony offenses for violations of certain provisions of this Act; and declaration that this Act takes effect upon becoming a law for purposes of rulemaking, and eight months after the state is granted primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries for all other purposes.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue –

\$1,266,100/Coal Mining Protection Fund/FY17-18

\$1,216,100/Coal Mining Protection Fund/FY18-19 and Subsequent Years

Increase State Expenditures –

\$522,800/General Fund/FY15-16

\$1,270,300/General Fund/FY16-17

\$2,498,800/General Fund/FY17-18

\$2,158,100/General Fund/FY18-19 and Subsequent Years

\$17,000/Highest Projected Cost of Next 10 Years Beginning With

FY18-19/Incarceration*

Increase Federal Expenditures –

\$1,145,800/FY17-18

\$975,500/FY18-19 and Subsequent Years

SUMMARY OF AMENDMENT (004381): Deletes and replaces certain language of the bill. Makes multiple revisions to the Primacy and Reclamation Act of Tennessee, including, but not limited to, defining “unwarranted failure to comply” as the failure of a person, operator, or permittee to prevent the occurrence of any violation of a permit or any requirement of this part

due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of a permit or this part due to indifference, lack of diligence, or lack of reasonable care. Authorizes the Commissioner of the Department of Environment and Conservation (TDEC), under Tenn. Code Ann. § 59-8-326 to expend money from the surface mining reclamation fund created by Tenn. Code Ann. § 59-8-326 instead of Tenn. Code Ann. § 59-8-212 for purposes of this chapter. Adds permittees to hear appeals consistent with Tenn. Code Ann. § 59-8-120 who are or may be adversely affected by orders, determinations, rules, permit terms, or rulings of the Commissioner that in any way affect surface coal mining and reclamation operations in this state. Requires the acreage fee shall be paid annually as prescribed in rules promulgated by the board under § 59-8-103(b)(1). Requires an amendment of a coal mining permit to be \$250 and an amendment for a coal exploration permit to be \$150. Defines “business day” as any day other than a Saturday, Sunday, or legal holiday. Requires permittees to establish and maintain appropriate records; make monthly reports to the commissioner; install, use, and maintain any necessary monitoring equipment or methods; evaluate results in accordance with the methods, locations, intervals, and manner that the board prescribes; and provide other information relative to surface coal mining and reclamation operations that the board deems reasonable and necessary under the board. Sections 3–36 and 39–42 of this act shall take effect upon becoming a law. Sections 37 and 38 shall take effect July 1, 2015. All other provisions of this act shall take effect eight months immediately following receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

On March 23, 2015, a fiscal memorandum was issued with the following estimated impact:

Increase State Revenue –

\$52,000/Coal Mining Protection Fund/FY15-16
\$58,500/Coal Mining Protection Fund/FY16-17
\$1,298,600/Coal Mining Protection Fund/FY17-18
\$1,216,100/Coal Mining Protection Fund/FY18-19 and Subsequent Years

Increase State Expenditures –

\$522,800/General Fund/FY15-16
\$1,270,300/General Fund/FY16-17
\$2,498,800/General Fund/FY17-18
\$2,158,100/General Fund/FY18-19 and Subsequent Years
\$17,000/Highest Projected Cost of Next 10 Years Beginning With
*FY18-19/Incarceration**

Increase Federal Expenditures –

\$1,145,800/FY17-18
\$975,500/FY18-19 and Subsequent Years

Based on additional information, the fiscal memorandum is being corrected as follows:

(CORRECTED)

Increase State Revenue –

\$52,000/Coal Mining Protection Fund/FY15-16
\$58,500/Coal Mining Protection Fund/FY16-17
\$1,596,300/Coal Mining Protection Fund/FY17-18
\$1,811,300/Coal Mining Protection Fund/FY18-19 and Subsequent Years

Increase State Expenditures –

\$522,800/General Fund/FY15-16
\$1,270,300/General Fund/FY16-17
\$2,498,800/General Fund/FY17-18
\$2,158,100/General Fund/FY18-19 and Subsequent Years
\$17,000/Highest Projected Cost of Next 10 Years Beginning With
FY18-19/Incarceration*

Increase Federal Expenditures –

\$1,145,800/FY17-18
\$975,500/FY18-19 and Subsequent Years

Corrected assumptions for the bill as amended:

- According to TDEC, this bill will require the Department to establish a program eligible for primacy and to regulate coal surface mining activities and the surface effects of underground mining.
- Currently, the Office of Surface Mining, Reclamation, and Enforcement (OSM) within the Department of the Interior regulates surface coal mining and reclamation activities in Tennessee.
- Federal law (30 C.F.R.731.12 and 731.15) requires a state to demonstrate the capacity to implement, administer, and enforce the Surface Mining Control and Reclamation Act (SMCRA) and federal rules implementing SMCRA including sufficient legal, technical, and administrative personnel and funding for the program.
- According to TDEC, two new board members will be added to the Board of Natural Resources, resulting in a recurring increase in state expenditures of \$2,240 (\$280 per meeting x 4 meetings x 2 members) in FY17-18 and subsequent years; the increase in state expenditures in FY16-17 is estimated to be \$1,120 (\$280 per meeting x 2 meetings x 2 members).
- This bill establishes the fee schedule, including a permit fee and an acreage fee, for permit applications in Section 59-8-107. Based on the OSM annual reports, it is estimated that TDEC will receive three new permit applications per year with fee revenue of \$3,850 each, nine renewals with fee revenue of \$500 each, eight transfer applications with fee revenue of \$350 each, no exploration permit applications, 1 significant revision application with fee revenue of \$2,000 each, and 104 insignificant revision applications or incidental boundary revisions with fee revenue of \$750 each, resulting in total annual application fee revenue of \$98,850 beginning in FY18-19 [(3 x \$3,850) + (9 x \$500) + (8 x \$350) + (1 x \$2,000) + (104 x \$750)]. The department estimates that FY17-18 revenue will be \$49,425 based on the uncertainty of the actual effective date of primacy.

- TDEC reports that the average issued acreage from Federal FY08-09 through Federal FY12-13 was 20,488. The Department estimates the number of acres submitted with permits and that the acreage was not reclaimed was 4,701. Therefore, the recurring increase in fee revenue beginning in FY18-19 is estimated to be \$597,800 $[(20,488 \text{ acres} \times \$20) + (4,701 \text{ acres} \times \$40)]$. The increase in fee revenue in FY17-18 is estimated to be \$298,900 $(\$597,800 / 2)$.
- TDEC indicates there will be additional state revenue derived from civil penalties. The increase in state revenue in FY17-18 is estimated to be \$37,200; the recurring increase in state revenue beginning in FY18-19 is estimated to be \$74,400.
- Based on severance tax collections reported by the Department of Revenue and coal production data published by the U.S. Energy Information Administration, it is estimated that 1,000,000 tons of coal will be severed annually and that half of the coal will be from surface mining operations and half will be from underground operations, resulting in \$65,000 in annual severance tax revenue beginning in FY17-18 $[(500,000 \text{ tons} \times \$0.09 \text{ per ton}) + (500,000 \text{ tons} \times \$0.04 \text{ per ton})]$. The actual effective date of primacy is uncertain and, therefore, it is estimated that FY15-16 revenue will be \$52,000; and FY16-17 revenue will be \$58,500.
- According to TDEC, the department is estimated to receive a one-time increase of federal funding of \$1,145,808 in FY17-18, and a recurring increase of federal funding of \$975,468 beginning in FY18-19.
- Based on information provided by TDEC, all fee revenue and federal funding received by TDEC will be deposited to the Coal Mining Protection Fund (CMPF).
- The total increase in state revenue to the CMPF in FY17-18 is estimated to be \$1,596,333 $(\$49,425 + \$298,900 + \$37,200 + \$65,000 + \$1,145,808)$; in FY18-19 and subsequent years is estimated to be \$1,811,318 $(\$98,850 + \$597,800 + \$74,200 + \$65,000 + \$975,468)$.
- TDEC will require appropriations from the General Fund (GF) for the purpose of funding new required positions.
- TDEC reports that six new positions will be required in FY15-16, resulting in a recurring increase in state expenditures from the GF of \$522,758.
- TDEC reports that an additional 21 positions will be required in the last half of FY16-17. The recurring increase in state expenditures from the GF for these positions beginning in FY17-18 is estimated to be \$1,492,849; the increase in state expenditures from the GF in FY16-17 (for the half-year impact) is estimated to be \$746,424 $(\$1,492,849 \times 50\% \text{ for half-year impact})$.
- The total increase in state expenditures for a total of 27 TDEC positions from the GF in FY16-17 is estimated to be \$1,269,182 $(\$522,758 + \$746,424)$; the total recurring increase in state expenditures for the 26 total TDEC positions from the GF beginning in FY17-18 is estimated to be \$2,015,607 $(\$522,758 + \$1,492,849)$.
- In FY17-18, based on the information received from TDEC, it is estimated that there will be a one-time increased state expenditure of \$340,680 for equipment, supplies, and vehicles, for a total increase in state expenditures from the GF in FY17-18 of \$2,356,287 $(\$2,015,607 + \$340,680)$.

Assumptions relative to the Attorney General:

- According to the information received from the Attorney General (AG), this bill would require AG's Office to review rules promulgated by TDEC and handle any litigation matters on their behalf, requiring one additional attorney; funding for such position will require an appropriation of funds from the GF; the recurring increase in state expenditures from the GF beginning in FY17-18 is estimated to be \$140,300.

Assumptions relative to Class E Felonies:

- The proposed legislation creates several Class E felony offenses for a person who: knowingly violates a condition of a permit issued under this Act or fails to comply with any orders issued; willfully and knowingly falsifies or fails to make any statement, representation, or certification in any records, information, plans, specifications, or other data required by the Board or TDEC; knowingly violates the conflict of interest provision; knowingly engages in surface coal mining and reclamation operations without a permit; or knowingly prevents or impedes an employee of this state from performing the employee's duty under this Act.
- According to the Department of Corrections (DOC), per the National Pollutant Discharge Elimination System (NPDS) compliance summary, there have been three notices of permit expiration to the Jim Justin Mines in Tennessee since 2011.
- Based on the information received from DOC, one additional Class E felony is estimated to occur every other year for persons operating in surface coal mining and reclamation operations without a permit.
- It is assumed that each offender will serve the same time as an average Class E felony (1.41 years).
- Population growth and recidivism discount factors do not apply because of the low number of admissions affected by this provision of the bill.
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 0.5 offenders serving 1.41 years (515 days) for a total of \$34,005 (\$66.03 x 515 days). The cost for 0.5 offenders is \$17,003 (\$34,005 x 0.5).
- The first year for incarceration impacts is estimated to be FY18-19.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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